

REMARKS

Claims 1-22 and 33-34 remain pending. Claims 23-32 have been withdrawn from consideration, with traverse, in response to a Restriction Requirement. Claim 34 has been amended for clarity. Claims 11, 12, 17 and 18 have been amended. Claims 15, 16, 21, and 22 have been canceled.

§ 112 rejection:

The Office Action rejects Claims 1, 11 and 17 under 35 U.S.C. 112, second paragraph as being indefinite on the basis that they include terms (“capabilities” and/or “capability policy”) that alleged “do not have a well-defined meaning.” (Office Action, paragraph 6). The Examiner asserts that “Applicant is required to define such terms in the claim itself so that the scope of the claim is understood/determined without ambiguity.” (Id.). This assertion is misguided.

Applicants may be their own lexicographers and “can define in the claims what they regard as their invention *essentially in whatever terms they choose* so long as the terms are not used in ways that are contrary to accepted meanings in the art.” MPEP 2173.01 (emphasis added). The Examiner does not assert that the terms used in the Claims are used in a manner contrary to accepted meanings in the art. In fact, the Examiner asserts that the terms “do not have a well-defined meaning.” If this is true, their use can’t possibly be contrary to the well-defined meaning. Thus, the rejection is improper.

The claims are proper so long as each claim gives one of skill in the art proper notice of the scope of the claim. See MPEP 2173.02, citing *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). In determining whether a claim is sufficiently definite, a court will analyze whether “one skilled in the art would understand the bounds of the claim when read in light of the specification.” *Enzo Life Scis., Inc. v. Digene Corp.*, 305 F. Supp. 2d 406, citing *Allen Eng’g Corp. v. Bartell Indus.*, 299 F.3d 1336, 1348 (Fed. Cir. 2002)(citing *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1377 (Fed. Cir. 2000)). This standard is clearly met in this case. For example, the specification states: “During capability authorization 312, it is determined whether the current blade’s capabilities match the capabilities

required by a current trusted computing policy, which is sometimes referred to herein as a capability policy. “ (Specification, Para 37).

Each of the claims fully complies with the requirements of the second paragraph of 35 U.S.C. § 112. Applicants hereby request that the rejection of claims 1, 11 and 17 be withdrawn. It is also requested that, for at least the forgoing reasons, the rejection of Claims 2-10, 33-34, 12-16, and 18-22 also be withdrawn, since such claims depend from Claims 1, 11, and 17, respectively.

§ 102(a) rejection:

The Office Action rejects Claims 1-14, 17-20 and 33-34 under 35 U.S.C. § 102(a) as anticipated by an article written by Steve Rokov, entitled Computer Technology Review, published on June 2003. Applicants reserve right to later assert, either regarding this patent application or any ensuing continuation applications, that the Rokov article does not constitute prior art as to Applicants’ claims.

“[F]or anticipation under 35 U.S.C. 102, the reference must teach *every aspect* of the claimed invention ...” MPEP 706.02 (emphasis added). “The identical invention must be shown *in as complete detail as contained in the ... claim.*” *Richardson v., Suzuki Motor Co.*, 868 F. 2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added). Alverson fails to disclose every aspect of the inventions claimed in amended Claims 1-14, 17-20 and 33-34. All claims remaining in the application are therefore in condition for allowance.

Claims 1-10, 33 and 34.

Claim 1 recites, in part: “chassis management logic to determine whether one or more capabilities associated with the blade device match a capability policy.” The Rokov article does not disclose, suggest or teach such limitation. The Office Action states that the term “capability policy” has been interpreted by the Examiner to mean “automated policy”, and then points to the Rokov article’s mention of an automated policy to read on this element of Claim 1. However, such strategy is improper; a prima facie case of anticipation has not been made.

As is stated above, Applicants state at paragraph 37 that a capability policy refers to “the capabilities required by a current trusted computing policy.”

The Rokov automated policies determine how an IPMI command will be sent to a spare blade device from a chassis management module when an existing blade device has failed. *A policy that drives the sending of an IPMI command to a fail-over blade device does not read on, suggest, teach or disclose a capability policy* as claimed in Claim 1. Thus, the Office Action has failed to make a prima facie case of anticipation for Claim 1. Claim 1 is therefore allowable for at least this reason. In addition, Claims 2-10 and 33-34, which depend from Claim 1, are also allowable for at the foregoing reason.

Claims 11-22.

The Office Action indicates that Claims 15-16 would be allowable if re-written in independent form.

Accordingly, Claim 16 has been put into independent form by incorporating the elements of Claim 16 into independent Claim 11. Claim 16 has been canceled. Amended Claim 11 is allowable. In addition, Claims 13 and 14, which depend from Claim 11, are also allowable.

In addition, the limitations of Claim 11, from which claim 12 depends, and the limitations of Claim 15, which depends from Claim 12, have been incorporated into Claim 12. Amended Claim 12 is allowable. Claim 15 has been canceled.

The Office Action indicates that Claims 21-22 would be allowable if re-written in independent form.

Accordingly, the limits of Claim 22 have been incorporated into independent Claim 17. Claim 22 has been canceled. Amended Claim 17 is allowable. In addition, claims 19-20, which depend from Claim 17, are also allowable.

In addition, the limitations of Claim 17, from which Claim 18 depends, and the limitations of Claim 22, which depends from Claim 18, have been incorporated into Claim 18. Claim 22 has been canceled. Amended Claim 18 is allowable.

Therefore as argued above, the rejections of all claims pending in the application, i.e. claims 1-22 and 33-34, should be withdrawn and the claims allowed. Applicant reserves the right to argue other assertions made in rejecting these claims in the future.

The Examiner is welcome to contact the Attorney of Record, Shireen Irani Bacon (Reg. No. 40,494) at 512.263.1250 to discuss any matters with the case. The Commissioner is hereby authorized to charge any fees in connection with this communication to our Deposit Account No. 02-2666.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-2666 and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: November 26, 2007

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